

McLafferty
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Request for Waiver of Overpayments Resulting From]

FILE: B-197632

DATE: August 6, 1980

MATTER OF: Michael J. McLafferty - Waiver of over-
payments--failure to deduct health
benefits premiums

DIGEST:

Claim of Government against new employee arising out of overpayments he received when no health benefits premiums were deducted from his pay is waived. Employee is without fault for failing to take corrective action since comparison of pay data by employee would not have put him on notice that he was enrolled in Federal Health Benefits Plan or that erroneous overpayments had been made. Also, he maintained private coverage in good faith belief that he was not enrolled. Under these circumstances reasonable person could not have been expected to make inquiry concerning correctness of his pay.

This decision is on an appeal of our Claims Division's denial of a request for waiver of the claim of the United States against Michael J. McLafferty, an employee of the Social Security Administration (SSA), for overpayments of pay. For the reasons stated below, we conclude that collection of the overpayments should be waived under the circumstances of this case.

Mr. McLafferty was hired on August 17, 1975, as a part-time contact representative, grade GS-5, Step 1 by the Social Security Administration. On August 18, 1975, Mr. McLafferty executed a Health Benefits Registration Form, SF 2809, wherein he enrolled himself, his wife and his four children in a health insurance plan. The enrollment form was received in the regional personnel office of the Department of Health, Education and Welfare (HEW) on September 3, 1975, and was processed with an effective date of September 14, 1975. Upon receipt of this enrollment form by the regional personnel office, the employee was in fact covered under the Federal plan. 5 C.F.R. § 890.306(d); (1975); FPM Supp. 890-1, subchapter S13, September 24, 1973.

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In this case, however, due to an administrative error the personnel office failed to process the information into its computerized system under a new procedure that was begun at about the same time. Therefore, the employee's coverage under the plan, was not reflected on his leave and earnings statements, nor were any premiums withheld from his pay. Sometime after enrolling, apparently in 1976, Mr. McLafferty questioned an administrative aide about his coverage and was told to reapply during the "open season", November 15-30, 1976. The record shows that in November 1976, Mr. McLafferty applied for health insurance a second time. As a result of this application, the error was subsequently discovered by the regional personnel office. Mr. McLafferty was overpaid \$666.34 over the period from September 14, 1975, through January 29, 1977.

The authority for waiver of erroneous overpayments of pay and allowances is found in 5 U.S.C. § 5584. The regulations implementing section 5584, 4 C.F.R. § 91.5(c), provide for the waiver where:

"(c) Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or member or any other person having an interest in obtaining a waiver of the claim. * * * Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case."

There is no dispute in this case that an administrative error did occur. Further, this Office agrees with the Claims Division's determination that there is no indication of fraud, misrepresentation or lack of good faith on the part of the employee.

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However, the question arises as to whether Mr. McLafferty was at fault in regard to the overpayments of pay. Our Claims Division on September 13, 1979, denied the application for waiver since Mr. McLafferty was aware that he had submitted SF 2809 and that deductions would be made from his pay. He was therefore considered to be partially at fault for not making adequate inquiries into the correctness of his pay.

With respect to the term "fault", we have stated that it exists if it is determined that the employee reasonably could have been expected to know that an error had been made but failed to take corrective action. Where an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take action to have it corrected, he is not without fault and waiver will be denied. Roosevelt W. Royals, B-188822, June 1, 1977. This rule is particularly relevant in the case of leave and earnings statements. As this Office stated in our decision, Arthur Weiner, B-184480, May 20, 1976, we cannot stress too highly the importance of a careful review by each employee of the pay data provided by the employing agency. Such review, and reporting of discrepancies for remedial action is an essential function in the Government's attempt to reduce payroll errors. Thus, if an employee is given a Standard Form 50 showing that he has life insurance coverage but his leave and earnings statements show that premiums were not withheld, the employee has notice of an error and is ordinarily considered to be at least partially at fault if he fails to take corrective action. John J. Doyle, B-191295, July 7, 1978. Likewise, when a Federal employee changes his health insurance option from low to high, but fails to report discrepancies in withholdings shown on pay documents, this Office has held that employee is at fault for failing to report any errors. Roosevelt W. Royals, supra.

Unlike the employees involved in the foregoing decisions Mr. McLafferty, a new employee with the Federal Government, was never put on notice of his insurance

coverage in the first instance; premiums were never deducted from his pay; enrollment was not shown on his SF 50 or on his leave and earnings statements; and membership cards were not sent to him. Under these circumstances, Mr. McLafferty reasonably could have believed that he was not covered and hence that no overpayments of pay had been made to him. Consequently, he did not have reason to inquire into the correctness of his pay.

At all times Mr. McLafferty's conduct was consistent with his reasonable belief that he was not enrolled in the Federal Health Benefits Plan. In August 1975, Mr. McLafferty carried a private health insurance policy on himself and his family. He maintained coverage during this period and continued to pay premiums on it pending coverage under the Federal plan. In fact, he filed claims under his private plan for medical expenses incurred by his family during this period and he never attempted to submit any claims under the Federal program.

Mr. McLafferty states that he did inquire about his Federal coverage and told an administrative aide that no deductions were being made. He says he was advised to apply for enrollment during the "open season" of November 15-30, 1976. When he did attempt to apply then, he did not seek retroactive coverage and requested a new application form.

The agency reports that it did not uncover the premium deduction problem until November 1976 when Mr. McLafferty attempted to enroll. At that time, the administrative aide questioned him and was advised that he had already requested health insurance coverage in August 1975. The administrative office, however could find no record of his prior application. On request, Mr. McLafferty voluntarily supplied a copy of the SF 2809 that he had kept for his own records. He was not notified by the agency that he had been covered until he received a certification of salary overpayment from the payroll office on February 15, 1977.

The Department of Health, Education and Welfare forwarded the request for waiver to this Office on

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June 15, 1977. The report by the HEW Regional Attorney states that the overpayment was clearly the result of administrative error and that there was no indication of fraud, misrepresentation, fault or lack of good faith on the employee's part. The report recommends approval of waiver of the overpayment.

In view of the foregoing discussion, this Office concludes that Mr. McLafferty is without fault in this matter since a comparison of pay data by the employee would not have put him on notice that he was in fact enrolled in the plan or that the erroneous overpayments of pay had been made to him, and therefore he reasonably could not have been expected to make inquiry concerning the correctness of his pay. Mr. McLafferty believed that he was not covered by the health benefits plan. Moreover, his actions in continuing his private coverage and in seeking to file a new application in November 1976 are consistent with this belief.

Finally, the fact that he subsequently did make inquiry about the plan and that he supplied his copy of the enrollment form to his office when it had no record of his enrollment shows that he acted in good faith in this matter.

Accordingly, under the authority of 5 U.S.C. § 5584(a)(1), the claim of the United States against Mr. Michael J. McLafferty for overpayments of pay in the amount of \$666.34 is hereby waived.


For The Comptroller General
of the United States